

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PEPSICO, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:05CV24-DJS
)	
WEN AMERICA, L.L.C.,)	
)	
Defendant.)	

ORDER

Now before the Court is plaintiff's motion for sanctions or, alternatively, to compel discovery [Doc. #38]. Defendant has been given six extensions of time to object and/or respond to plaintiff's first requests for production of documents. Defendant's written response as well as the documents to be produced were to be delivered to plaintiff's counsel no later than October 10, 2005. Defendant did not comply. Defendant also has not replied to plaintiff's motion for sanctions filed on October 17, 2005. Instead, defendant filed a motion to take depositions out of time [Doc. # 40] on November 1, 2005. Pursuant to the Court's order of June 1, 2005, the parties have until December 15, 2005 to complete discovery in this case. Currently, defendant is not out of time.

Plaintiff also requests that the Court compel adequate responses to plaintiff's first set of interrogatories directed to

defendant, which defendant did respond to on September 15, 2005 [Doc. #39.1]. Upon careful review of plaintiff's interrogatories and defendant's responses, the Court will grant plaintiff's request to compel full and complete answers to questions 2, 3, 4, 7, 8, and 10 of plaintiff's first set of interrogatories. However, the Court declines to grant plaintiff's request for an award of attorney's fees pursuant to Fed. R. Civ. P. 37(a)(4)(A).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for sanctions or, alternatively, to compel discovery [Doc. #38] is granted in part as follows, and denied in part.

IT IS FURTHER ORDERED that defendant shall within ten (10) days of this order show cause why defendant's pleadings should not be struck pursuant to Fed. R. Civ. P. 37(b)(2)(C).

IT IS FURTHER ORDERED that defendant shall within ten (10) days of this order provide plaintiff's counsel with defendant's written response to plaintiff's first requests for production of documents as well as the documents to be produced. Pursuant to Fed. R. Civ. P. 34(b), the documents shall be organized and labeled to correspond with the categories in the requests.

IT IS FURTHER ORDERED that defendant shall within ten (10) days of this order provide plaintiff's counsel with full and complete answers to questions 2, 3, 4, 7, 8, and 10 of plaintiff's first set of interrogatories.

IT IS FURTHER ORDERED that defendant's motion to take depositions out of time [Doc. #40] is denied as moot.

Dated this 4th day of November, 2005.

/s/ Donald J. Stohr
UNITED STATES DISTRICT JUDGE